

**Betreff:** Incorrect information in recent article published in Correctiv

**Datum:** Mon, 12 Aug 2019 13:27:38 +0000

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Dear Sir/Madam,

We are writing to express the disquiet of Frontex, the European Border and Coast Guard, at the incorrect information expressed in the article “Frontex: Die Überwacher überwachen”, published in Correctiv on 4 August.

The article contains a series of false statements and we would like to clarify them one by one.

**1) Lack of accountability when it comes to respect for fundamental rights**

*“Kaum einer kann noch kontrollieren, ob die Agentur die Grundrechte von Flüchtlingen achtet. Ob sie wirklich versucht, auf See Menschenleben zu retten.”*

Fundamental rights are at the core of all the agency’s activities. They are integrated into the Frontex Codes of Conduct, the Common Core Curricula for border guards, specialised training for border surveillance officers or officers conducting forced return operations.

The Code of Conduct obliges every officer who has a reason to believe fundamental rights of any person were violated, either by witnessing such violation directly, or by hearing about it, to report this immediately to Frontex in form of a Serious Incident Report.

All reports related to potential violation of fundamental rights are immediately passed on to the agency and Fundamental Rights Office, an independent body established to advise the agency and monitor compliance with fundamental rights in all its activities.

Frontex officers did write such reports in the past and the agency immediately contacted the authorities of the countries concerned and informed the European Commission. It should be noted however that while the agency can suspend an officer deployed by Frontex, it does not have the authority over the national border police forces nor does it have the power to conduct investigations in the EU Member States.

Another such measure is the complaints mechanism which allows anyone who believes their rights have been violated by a Frontex deployed officer to lodge a complaint.

All those measures – specific guidelines for officers, training, monitoring by independent experts, the Fundamental Rights Office and Consultative Forum (an independent advisory body on fundamental

rights comprised of European and international organisations and NGOs) are intended to make sure the appropriate checks and balances are in place.

As to the second part of your statement related to search and rescue, so far this year, between January and July, the European Border and Coast Guard Agency contributed to the rescue of 15469 persons in all our sea operations. This includes 5521 people in operation Indalo (Spain), 8374 in operation Poseidon Sea and 1601 in operation Themis. This data includes all forms of contribution – detection, interception and direct involvement of Frontex assets.

Search and Rescue is a legal obligation. International law obliges all vessels to provide assistance to any persons found in distress, making search and rescue (SAR) a priority for everyone operating at sea. SAR is a specific objective of the operational plan of every Frontex joint maritime operation. For this reason, vessels deployed by Frontex to an operational area are always ready to also provide support to the national authorities in SAR operations.

## **2) Suspicion: Frontex vessels stay away on purpose from areas where boats get in distress and people drown in the sea.**

*Es geht in dieser Geschichte um einen schlimmen Verdacht, von dem Seenotretter hinter vorgehaltener Hand berichten und der an Europas Gewissen nagt: Schiffe der europäischen Grenzüberwachung sollen sich bewusst von den Orten fernhalten, an denen Flüchtlingsboote im Mittelmeer kentern und Menschen im Mittelmeer untergehen und ertrinken. Kann das sein?*

In order to explain your doubts, we would like to provide you some information on how joint operations are coordinated.

Firstly - the exact extent of the operational area of a Frontex-coordinated operation can only be decided together with the member states hosting our operations and Frontex cannot run an operation independently.

When a vessel deployed by Frontex performs border surveillance activities, it operates under the command of the national border control authorities (the International Coordination Centre (ICC)), but when Search and Rescue is declared, Frontex assets (vessels, aircraft) pass automatically under the command of the national Maritime Rescue Coordination Centres (MRCC). The MRCC can direct Frontex assets to a SAR incident without geographical limitations, often outside the operational area.

As to the second part of your question, the answer is no - the area in which rescue missions can take place is independent of the operational area. Every country has a designated search and rescue zone in which it is responsible for coordination of SAR. You can find additional information on rules governing SAR in the International Convention for the Safety of Life at Sea (SOLAS), 1974 and the SAR Convention (International Maritime Organization).

### **3) Accusations related to lack of transparency**

The agency fully abides by the principle of transparency and provides access to its documents, to the general public. In the past years Frontex released hundreds of documents to EU citizens.

Frontex regularly meets with researchers and journalists and gives them access to its operations, for example embedding on patrols, and officers. Every year we organise tens of patrols and hundreds of visits to our operations and to our headquarters where we show and explain our activities and mandate.

### **4) One of Frontex officers offered to leak information**

*The article states that: „Ein Mitarbeiter von Frontex ist in der Leitung. „Er hat gesagt, wenn wir den Widerspruch zurückziehen, würde er uns die Daten irgendwie zukommen lassen,“ erinnert sich Semsrott.*

*Doch die Aktivisten lassen sich darauf nicht ein. Sie wollen die Daten auf offiziellem Weg erhalten. Sie wollen erreichen, was der Frontex-Anrufer mit seinem Angebot eines Leaks offensichtlich verhindern wollte: einen Präzedenzfall, auf den sich später auch andere berufen können. Also klagen sie. Es ist die erste Auskunftsklage gegen Frontex überhaupt.*

This is a false accusation. We hereby request that correction be issued within 24 hours. The Frontex officer in question gave a call to Mr Semsrott on 13 December 2019.

This was in follow-up to an email sent on 10 December 2017 from Mr Semsrott offering not to go to court if the agency decides to disclose certain operational information : “(...) a decision by Frontex to publish and/or make available the requested documents prior to this deadline - thus during the first week of January 2018 - would be considered by us a positive step towards greater transparency, and would certainly make us reconsider our decision to challenge Frontex’s confirmatory decision before the General Court.

*We would therefore like to request from Frontex a confirmation on whether this is indeed something it would be willing to do, or whether its refusal to disclose this information will still stand on the 1 January 2018.”*

In the said call to Mr Semsrott, the Frontex officer informed Mr Semsrott about the fact that Frontex conducts a case-by-case examination of every application for public access to documents according to



the Regulation (EC) [No 1049/2001](#) of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. He also informed Mr Semsrott that the agency would not be able to release information about ongoing operational activities.

Furthermore, to assist Mr Semsrott, the Frontex officer informed him that he could specify his query so that it could be handled by the Frontex Press Office as a request for information.

Frontex never offered to leak any information.

## **5) Meeting with Fundamental Rights Officer**

Frontex's Fundamental Rights Officer, representing an independent body established to advise the agency and monitor compliance with fundamental rights in all its activities, invited the authors of the article for a meeting in January 2019. She gave them an interview on the work of the Fundamental Rights Office and the measure the agency has to monitor potential fundamental rights violations. The Fundamental Rights Officer asked the authors to submit the draft article to her to make sure that everything she said was represented in a factual way. They agreed in writing that the draft will be shared. Unfortunately, the authors did not submit the draft version to the Fundamental Rights Officer.

## **6) Accusations related to lack of accountability**

The European Border and Coast Guard Agency is a European Union body and as such it is fully accountable to all relevant European institutions: Frontex reports on its activities to the European Parliament and the Council, and the two institutions exercise supervision. The agency's Executive Director regularly attends hearings at the European Parliament and European Council meetings. Furthermore, the European Court of Auditors and the European Ombudsman oversee the agency's budget and its functioning.

Frontex is governed by the Management Board comprising heads of border authorities from all EU Member States and Schengen Associated Countries as well as two representatives from the European Commission.

The agency's Fundamental Rights Officer also briefs the Frontex Management Board on any incidents on a regular basis.

**7) Accusations towards Frontex officers and their alleged violation of fundamental rights during return operations**

*Einem Bericht der Grundrechtebeauftragten aus dem März 2019 zufolge verstoßen Frontex-Beamte bei Abschiebeflügen immer wieder gegen Menschenrechtsstandards und eigene Richtlinien*

*This information is false. In no part do the FRO's observations to return operations coordinated by the agency (2nd semester of 2018) include any reference to any violation allegedly committed by Frontex officers.*

No Frontex officer was present on board of the two flights referred to in the article.

The return of the minor was in line with the national law, but not with Frontex internal regulations and best practices. This is why, after the incident was brought to the agency's attention, Frontex introduced changes to the reporting of passenger lists for return flight to avoid such a situation in the future.

Frontex is responsible for the coordination of the logistical side of the return operations, but it is crucial to understand that the decision about who should be returned can only be taken by the judicial or administrative authorities of the Member States. According to European legislation, the individual is always given the possibility to appeal against this return decision. Frontex does not have the mandate to enter into the merits of return decisions issued by the Member States. This is the exclusive responsibility of Member States. However, after the report of the independent monitor and the FRO observations, presented to the agency's Management Board and the Consultative Forum, Frontex took action to mitigate the situation by introducing changes to the reporting system so that the agency will be notified if a minor is on the list of passengers to be returned.

**8) Frontex has not reacted to information about violation of fundamental rights by Hungarian border police**

This is not true. In 2017, the agency asked the European Commission for a legal opinion related to legislative changes in Hungary. Furthermore, Frontex consequently reduced the number of officers deployed in the area.

**9) Frontex is trying to limit the contact of the agency's officers with migrants at the external borders and invests in aerial surveillance instead**

This information is false. At the moment, the agency deploys 1368 officers at the external borders, 25 vessels, 13 aircraft, 90 patrol cars, 13 thermovision vans, as well as other smaller equipment.

Aerial surveillance is, and has always been, part of our border control activities and aim at detecting possible boats in distress, but also cross-border crime, such as drugs or weapons smuggling, people smuggling, illegal fishing or environmental crime.

It is crucial to understand that Search and Rescue (SAR) consists of two elements: search – monitoring and locating a vessel in distress, and rescue – the action performed to save people at risk at sea.

In the vast majority of SAR operations, planes are tasked with surveillance and determining the exact location of a boat in distress. If a plane spots a vessel in distress, it immediately informs the relevant maritime rescue coordination center that sends the closest and most capable vessel to perform the rescue.

**10) Frontex coordinates (...) dealing with newly arrived refugees in EU countries and other countries**

This information is false. The agency does not replace border control duty of the individual EU member states, but provides additional assistance to Member States in the identification and registration of migrants, but works under the command of national authorities. Just like on board of every vessel, helicopter, aircraft and patrol car deployed by Frontex a national border police/coast guard officer is always present, officers deployed by Frontex to the hotspots work under the command of the national team leader.

**11) Since last year, Frontex has not only received images from its own reconnaissance satellites and from the defense, aerospace company Airbus, but also from reconnaissance drones.**

This information is incorrect. Frontex does not own satellites. It can use satellite images for monitoring purposes and acquires them via the Copernicus Programme managed by the European Commission and from the EU SATCen. Furthermore it is important to stress that Frontex is not flying any drones at

present and does not receive any information from drones. The agency merely tested the possible use of drones in Italy and in Greece and the tests finished in June.

The quality of the article would have been considerably improved had the authors dedicated more time to scrutiny of the Frontex Regulation governing the agency's activities and the regular publicly available information on its operations

Frontex Press Office stands ready to assist researchers and journalists with any queries which might help the public to better understand the agency's work.

For the reasons stated above, we request that you correct the original article and publish a factual version within the next 24 hours.

Kind regards,

Frontex Press Office



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